

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>CLINTON STRANGE,</b>	)	
	)	
<i>Plaintiff,</i>	)	
<b>v.</b>	)	<b>CASE NO. 18-CV-01071</b>
	)	
<b>HEALTHSTREAM, INC., TWILIO INC.</b>	)	
<b>And PHC-MINDEN G.P., INC.,</b>	)	
	)	
<i>Defendants.</i>	)	

**TWILIO INC.'S MOTION TO DISMISS FOR FAILURE TO PAY FILING FEE**

Defendant Twilio Inc., by and through counsel and pursuant to Federal Rule of Civil Procedure 41(b), moves to dismiss Plaintiff's Complaint due to Plaintiff's failure to pay the filing fee or request an extension for the same, as required by the Court's December 7, 2018 Order denying Plaintiff's Application for Leave to Proceed in Forma Pauperis. In support of the instant motion, Twilio Inc. states as follows:

On October 11, 2018, Plaintiff filed his *pro se* Complaint.<sup>1</sup> Plaintiff included with his Complaint an Application for Leave to Proceed in Forma Pauperis.<sup>2</sup> On December 7, 2018, the Court entered an Order denying Plaintiff's Application for Leave to Proceed in Forma Pauperis.<sup>3</sup> The Court further ordered that Plaintiff submit the \$400.00 filing fee in full to the Clerk of Court or request an extension to do the same within twenty-eight days of Plaintiff's receipt of the Order denying his Application for Leave to Proceed in Forma Pauperis. Over thirty-one days have passed since entry of the Court's Order, and Plaintiff has failed to submit the \$400.00 filing fee or request an extension to do the same.

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<sup>1</sup> Doc. 1.

<sup>2</sup> Doc. 2.

<sup>3</sup> Doc. 29.

“Federal Rule of Civil Procedure 41(b) gives the court the authority to dismiss a case for ‘failure of the plaintiff to prosecute or to comply with these rules or any order of the court.’”<sup>4</sup> Plaintiff has failed to comply with the Court’s December 4, 2018 Order by paying the initial filing fee or requesting an extension to pay the filing fee within twenty-eight days of that Order. As noted in the Court’s December 7, 2018 Order: “Failure to comply with this Order within the specified time may result in the **dismissal of this action** for failure to prosecute and failure to comply with the court’s Order[.]”<sup>5</sup> The Sixth Circuit Court of Appeals has specifically ruled that dismissal of a plaintiff’s complaint for lack of prosecution is appropriate when a plaintiff fails to follow a court’s order that he pay the initial filing fee.<sup>6</sup> Similarly, Plaintiff’s failure to follow this Court’s Order to submit the \$400.00 filing fee warrants dismissal of his Complaint in its entirety.

For the reasons set forth above, Plaintiff’s Complaint, including all claims against Twilio Inc. therein, should be dismissed. Plaintiff should further be required to seek leave of this Court prior to his filing a new complaint against Twilio Inc. related to the same subject matter of the instant case.

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<sup>4</sup> Harbison v. Thompson, 2017 U.S. Dist. LEXIS 12407, at \*9 (M.D. Tenn. Jan. 30, 2017) (citing Nye Capital Appreciation Partners, L.L.C. v. Nemchik, 483 Fed. Appx. 1, 9 (6th Cir. 2012); Knoll v. Am. Tel. & Tel. Co., 176 F.3d 359, 362–63 (6th Cir. 1999)).

<sup>5</sup> Doc. 28 (emphasis added).

<sup>6</sup> See, e.g., Bomer v. Lavigne, 76 F. App’x 660, 662 (6<sup>th</sup> Cir. 2003) (a copy of this opinion is attached hereto pursuant to Sixth Circuit Court of Appeals Rule 28(g)).

Respectfully submitted,

/s/ Brigham A. Dixson

J. Eric Miles, TN #21906

Brigham A. Dixson, TN #35600

***North, Pursell & Ramos, PLC***

414 Union Street, Suite 1850

Nashville, TN 37219-1783

Office: 615-255-2555

Facsimile: 615-255-0032

emiles@npratorneys.com

bdixson@npratorneys.com

Michael Hazzard

mhazzard@jonesday.com

Kaytlin L. Roholt

kroholt@jonesday.com

JONES DAY

51 Louisiana Avenue, NW

Washington, DC 20001-2113

Telephone: (202) 879-3829

Facsimile: (202) 626-1700

*Counsel for Twilio Inc.*

## **CERTIFICATE OF SERVICE**

I hereby certify that on January 8, 2019, I caused a copy of Twilio Inc.'s Motion to Dismiss to be filed electronically with the Court and that this document was thereby served through CM/ECF upon the following individuals:

Clarence J. Gideon, Jr.  
cj@gideoncooper.com  
Justin B. Carter  
blake@gideoncooper.com  
Gideon, Cooper & Essary, PLC  
315 Deaderick St., Ste. 1100  
Nashville, TN 37238

*Counsel for PHC-Minden G.P., Inc.*

Tara L. Swafford  
Elizabeth G. Hart  
The Swafford Law Firm, PLLC  
207 Third Avenue North  
Franklin, TN 37064

*Counsel for HealthStream, Inc.*

I further certify that on January 8, 2019, I served a copy of Twilio Inc.'s Motion to Dismiss via United States Mail on:

Clinton Strange  
7021 Winburn Drive  
Greenwood, LA 71033

*Plaintiff*

Respectfully submitted this 8th day of January, 2019.

/s/ Brigham A. Dixon

Brigham A. Dixon